YORK ASSOCIATES, LTD.

IBLA 81-750 Decided September 16, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, canceling oil and gas lease N-27217 in part and denying assignment thereof in part, in favor of lease N-28857.

Vacated and remanded.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Cancellation--Oil and Gas Leases: First-Qualified Applicant--Oil and Gas Leases: Noncompetitive Leases

> Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to a valid previously-filed offer, where it subsequently issues a second conflicting lease for the same lands to the senior offeror, and where the junior lease has not been assigned to a bona fide purchaser, BLM's decision canceling the lease issued to the senior offeror will be vacated, because the statute governing oil and gas leasing of non-KGS lands dictates that the qualified person first making application for a lease (the senior offeror) is entitled to receive any lease which is issued.

2. Oil and Gas Leases: Bona Fide Purchaser--Oil and Gas Leases: Cancellation

> Where, at the time of an assignment of an oil and gas lease, BLM's oil and gas status plat reveals that the leased lands are subject to a senior, and therefore superior, oil and gas lease offer, the assignee of the lease is not a bona fide

purchaser, for it is imputed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

APPEARANCES: Richard S. Shannon III, General Partner, York Associates, Ltd.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

York Associates, Ltd., has appealed a decision of the Nevada State Office, Bureau of Land Management (BLM), dated May 19, 1981, canceling York's oil and gas lease, N-27217, insofar as it concerned sec. 2, T. 13 S., R. 64 E., Mount Diablo meridian, Nevada, and denying approval of an assignment of its interest therein. BLM held that, due to an error on its part, it had approved another lease for sec. 2, N-28857, and that it could not cancel lease N-28857 because it had been assigned to a bona fide purchaser.

The record shows that appellant filed a noncompetitive over-the-counter offer for secs. 2 and 11 in the above-described township on November 21, 1979. BLM recorded this application on its oil and gas plat. The offer was not defective, and appellant complied with all of BLM's additional requirements, including execution of stipulations and certification of its qualifications.

Subsequently, on January 29, 1980, Kenneth F. Cummings filed an over-the-counter offer for sec. 2 only. Although appellant's offer was senior and, as such, legally superior to Cummings' offer for this section (see discussion below), BLM issued a lease on it to Cummings on August 28, 1980. Cummings subsequently assigned 100 percent of record title to lease N-28857 to Cities Service Company on September 8, 1980, and BLM approved this assignment on October 3, 1980. Cummings retained a 5 percent overriding royalty.

Effective October 1, 1980, BLM also issued a lease, designated as N-27217, to appellant for sec. 2 (as well as for sec. 11), thus establishing a conflict with Cummings' previously-issued lease. Appellant executed an assignment of 100 percent of this lease to Atlantic Richfield Company on January 5, 1981, and submitted it to BLM for approval on February 26, 1981. Appellant retained a 5 percent overriding royalty interest in the lease.

Having apparently discovered the conflict between the two leases, BLM on May 19, 1981, issued its decision canceling appellant's lease as to sec. 2 and denying approval of the assignment to Atlantic Richfield as to sec. 2. BLM named Cummings and Cities Service as adverse parties in its decision, and appellant apparently duly served them with copies of its notice of appeal, as required by 43 CFR 4.413. Neither Cummings nor Cities Service has answered.

[1] BLM erred by issuing a lease to Cummings for sec. 2. The statute governing oil and gas leasing of lands such as these, which are not on a known geologic structure of a producing oil and gas field, 30 U.S.C. § 226(c) (1976), requires that the person first making application for the lease shall be entitled to receive it if the Department determines to lease the land, provided that the applicant is qualified to hold it. The record shows clearly that appellant was the first person to apply for an oil and gas lease of these lands. Thus, in the absence of some defect in his offer, appellant, not Cummings, should have received the lease. A. D. Matchett, 56 IBLA 231 (1981); George P. Wolter, Jr., 47 IBLA 396 (1980).

BLM recognized that it was in error in leasing sec. 2 to Cummings, but felt constrained not to cancel his lease because it had already been assigned to Cities Service Company. It is true, as we held in George P. Wolter, supra at 399, that an incorrectly-issued oil and gas lease may not be canceled if it has been assigned to a bona fide purchaser, even if there was a superior offer extant when the lease issued. 30 U.S.C. § 184 (1976); 43 CFR 3102.1-2. However, in the instant case, BLM apparently assumed without inquiry that Cities Service Company was a bona fide purchaser.

Where the possibility exists that an assignee of an oil and gas lease interest is a bona fide purchaser, BLM should join that party to the proceeding and allow it the opportunity to show that it acquired and holds this interest as a bona fide purchaser, and to give the opposing party the opportunity to present evidence to the contrary. 43 CFR 3102.1-2(c), 3108.3(d); Geosearch, Inc., 47 IBLA 39 (1980), aff'd, Geosearch, Inc. v. Andrus, 508 F. Supp. 839, 843-44 (D. Wyo. 1981); Geosearch Inc., 41 IBLA 291 (1979); Geosearch, Inc., 40 IBLA 397 (1979); Duncan Miller, A-30600 (Dec. 1, 1966). Thus, in the absence of an allegation by Cities Service Company that it was a bona fide purchaser, it was error for BLM to so assume. Normally, we would remand the matter to BLM to inquire into the bona fides of the assignee.

However, in the instant case, we hold as a matter of law that Cities Service Company was not a bona fide purchaser of Cummings' interest. In order to determine whether an assignee is a bona fide purchaser, it is necessary to examine the state of his knowledge, both actual and constructive, at the time of the assignment. Winkler v. Andrus, 614 F.2d 707, 712 (10th Cir. 1980); O'Kane v. Walker, 561 F.2d 207 (10th Cir. 1977); Southwestern Petroleum Corp., v. Udall, 361 F.2d 650, 656 (10th Cir. 1966). Assignees of Federal oil and gas leases who seek to qualify as bona fide purchasers are deemed to have constructive notice of all of the BLM records pertaining to the lease at the time of the assignment. Winkler v. Andrus, supra at 713; O'Kane v. Walker, supra at 212; Southwestern Petroleum Corp. v. Udall, supra at 655-56.

Here, BLM's oil and gas plat for sec. 2, the basic means for registering interests in oil and gas leases, showed appellant's previously filed offer for sec. 2 at all times preceding September 8, 1980, the date Cities Service acquired its interest from Cummings. Although

on September 8 the plat showed that Cummings' interest was a lease and that appellant's interest was only an application, 1/ it showed that appellant's offer was senior to Cummings' and therefore superior. Notice of the presence of an outstanding senior offer for lands which are subject to a lease was enough to create doubt by Cities Service as a would-be purchaser of the lease that the underlying offer for the lease was inferior to the senior offer of record, and to create suspicion that the lease was therefore invalid. Nothing in the record of either Cummings' or appellant's offers is sufficient to remove this doubt.

Thus, we hold that Cities Service was not a bona fide purchaser, and that BLM is not barred from canceling lease N-28857, as is appropriate here, in order to recognize appellant's superior right to lease sec. 2. Since Cities Service Company and Cummings were named as parties on appeal and duly served by appellant with a copy of his notice of appeal, but have not participated, it is unnecessary to remand the matter to BLM to join them to the proceeding. Cf. Donald V. Coyer, 50 IBLA 306, 311-12 (1981), aff'd, Coyer v. Andrus, Civ. No. C80-370K (D.Wyo. Mar. 5, 1981); George P. Wolter, Jr., supra at 398. On remand, BLM should determine the validity of appellant's assignment to Atlantic Richfield Company.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated, and the matter remanded for further action consistent herewith.

Bernard V. Parrette
Chief Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge.

1/ On Sept. 8, 1980, the plat showed that sec. 2 was subject to oil and gas lease N-28857 (this entry had been made on the plat on Sept. 3, 1980) and to oil and gas lease application N-27217 (the plat was not changed to show that N-27217 was a lease until after Sept. 8).